



**ASSOCIATION of
BUSINESSES ADVOCATING
TARIFF EQUITY**

Alcoa Inc.
Cargill
Chrysler Group LLC
Delphi Corporation
Dow Chemical Company
Dow Corning Corporation
Eaton Corporation
Edward C. Levy Company
Enbridge Energy Limited Partnership
Ford Motor Company
Gerdau MacSteel – Monroe and Jackson

General Motors LLC
Marathon Petroleum Company LLC
Martin Marietta Magnesia Specialties
Metal Technologies, Inc.
Praxair, Inc.
U. S. Steel

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**TESTIMONY OF ASSOCIATION OF BUSINESSES
ADVOCATING TARIFF EQUITY (ABATE)
BEFORE
SENATE ENERGY AND TECHNOLOGY COMMITTEE
NOVEMBER 8, 2011**

Chairman Nofs and Members of the Committee.

[Introduction of presenters from ABATE, including representatives from Chrysler, Dow Corning, and Marathon.]

Thank you for the opportunity to present the views and concerns of the Association of Businesses Advocating Tariff Equity, a group that has existed for more than 30 years to advocate the interest of large industrial customers in energy related matters. The ABATE group includes some of Michigan's largest employers and the cost of electricity and natural gas are extremely important to the competitiveness of our member's Michigan operations. ABATE members typically have operations in many states, so evaluating utilities and utility rates is something they do day in and day out. Many of Michigan's largest job-providers find Michigan's electric utility rates uncompetitively high, placing their Michigan operations at a disadvantage in national and

global markets, and certain provisions of Act 286 of 2008 have aggravated this disadvantage. You can see how Michigan industrial rates compare on average across the country on the attached map based on standard EIA data. We propose to you today some specific modifications to Act 286 which would encourage economic development and job creation in Michigan.

Act 286 of 2008 simultaneously did two things (1) it reduced the cost control discipline provided by competition for utilities, and (2) at the same time lessened the regulatory scrutiny by the Michigan Public Service Commission (MPSC) of utility rate increase requests. Though unintended, the double pronged effect of these two major changes (eliminating most competition while at the same time restricting regulatory scrutiny) has resulted in dramatically increased electric rates in a state which already had relatively uncompetitive electric rates compared to the rest of the region.

1. Repeal Utilities' Ability to Automatically Raise Rates After 180 days

Under Act 286 utilities are permitted to automatically implement rate increases after 180 days if the Commission has not acted. Since it is common for utility rate increase requests to be hundreds of millions of dollars with dozens of witnesses and thousands of pages of prepared testimony and exhibits claiming to support such requests, the Commission is unable to complete a thorough review and issue a final order in 180 days of such huge requests, so the result is that electric utility rates are automatically put into effect by the utilities themselves in virtually every case. This provision of Act 286 basically made customers a bank which utilities are permitted to go to 6 months after filing a rate increase request and withdraw whatever amount they wish up to the amount of their requested increase. As history has shown in the graphs attached to this testimony, since Act 286 was passed that is exactly what the utilities have done and they have always tried to self-implement a greater rate increase than the MPSC ultimately finds is

justifiable. This means that not only are Michigan's existing rates uncompetitively high, and rising fast, they also have a component which is usually an overcharge and which ultimately many months down the road should be refunded, but under Act 286, it is not required to be refunded to those who were actually overcharged. Act 286 changed the law for the first time in more than 50 years and allowed utilities to implement rate increases without prior MPSC review and approval. Prior law required (1) notice, (2) a full and complete hearing, (3) a staff investigation and report, and (4) an MPSC order containing findings of fact as to why the increase was necessary. Since Act 286 utilities just self implement after 180 days from their requests, and have created an assembly line of rate increases. With the additional requirement within Act 286 that the MPSC must issue a final order within 12 months of the filed rate increase request, there is simply no need for utilities to self-implement rates after 6 months of the filing. This section of law should be repealed and replaced with language similar to what had existed for 50 years which at least required regulatory scrutiny before increases could take effect and did not constantly result in customers being overcharged like has resulted from this provision of Act 286.

Since the passage of Act 286 electric utility rates have been increasing at an unsustainable rate. Attached is a bar chart showing the utilities' rate increase requests since October 2008 when Act 286 became effective, as well as the amounts which they have self-implemented after 180 days, and then the lower amounts that the MPSC ultimately awarded. As you can see, Act 286 has resulted in self-implemented rate increases of nearly \$1 billion in the 3 years Act 286 has been in effect. Such a scheme allowing self-implementation will virtually always result in excessive amounts being self-implemented and refunds will always be pending.

Businesses can not have any hope of budgeting for next year's utility rates when the rates being charged are virtually always excessive and subject to revision months down the road, and by then new overcharges will have been self-implemented.

2. Refund of actual overcharges should be required

Even though Act 286 created a system where overcharges will likely always occur and refunds will always be pending, it did not require the customers who were actually overcharged to get refunded the amount they were actually overcharged. Instead, the language ends up just requiring the "total" amount of excessive revenues to be refund, but not necessarily to the folks who were overcharged. In manufacturing, this could be hundreds of thousands of dollars if at the time of the refunding the manufacture's plant is not running at the same level as when the overcharges occurred. ABATE believes this is an unintended consequence and this serious oversight needs to be corrected and replaced with language that plainly says "If you overcharge customers for any reason, you shall refund the correct amount with interest to the actual customers who were overcharged."

3. The 10% Cap on Customer Choice greatly disadvantages Michigan Companies

Not only did Act 286 accelerate rate increases by allowing utilities to raise their own rates after 180 days, it also re-monopolized the electric utility industry in Michigan, thus eliminating customers options to search for cheaper suppliers – unless you slipped in under the 10% cap. Virtually every argument advanced to the legislature in 2008 as to why re-monopolization should be done has been proven wrong. It was claimed new power plants needed to be built right away; after 3 years none have been built or should be any time soon. Even with the potential retirement of some older coal generation, with the significant drop in electric demand, which had begun in 2008, Michigan should not need any new power plants

beyond the mandated renewable generation for many years to come. Additionally, it was claimed that a level of 10% choice was ample and would not be fully subscribed for many years; but it was fully taken up in less than 12 months and the waiting list is over 5,000 customers. Nonetheless, for the last 3 years Michigan business have been placed at a decided electric power cost disadvantage if they were trying to compete against someone else in the Midwest with access to cheaper electric power or if their competitor was under the 10% cap.

The historical evidence shows conclusively that all customers benefited significantly from choice while it was available, even residential customers and those who did not use choice. Utilities better controlled their costs and rate increase requests were far more moderate when customers could leave. This resulted in more reasonable utility rates for those who stayed, and those who chose another supplier also saved by having access to the lowest cost power supplies.

It is simply a myth to claim that if more customers are allowed to choose their electric provider, those that remain will have to pay more. It is not true. It is not what happened from 2000-2008. The evidence is clear and unambiguous that customers who stayed saved. And it is not how the electric utility system actually works. For example, Detroit Edison's 2010 power supply cost recovery (PSCR) filings at the MPSC show that regular customers (i.e., those not on choice) **save approximately \$60 million per year** because the Choice Program exists. Substantial savings of variable costs are achieved when choice customers leave, costly peak demands are reduced producing savings, and these types of savings offset remaining fixed costs.

ABATE recently surveyed its members regarding customer choice. 80% of those responding believe that having choice can or would reduce their costs in Michigan if they could get it, making them more competitive. While only about half our members currently have some

load on choice under the 10% cap, most of the other half are in the queue to get on choice. That's just ABATE members. Statewide there are more than 5,000 customers who want to choose their own electricity supplier, and the only thing stopping them is the 10% cap Act 286 imposed. How can it possibly be in the public interest to handicap Michigan job providers this way? Undoubtedly, some of this demand for customer choice would moderate if the utilities rates were not so uncompetitive.

The cap is plainly an arbitrary number resulting in government picking winners and losers. The cap should be eliminated now. When forced to compete, utilities have to keep better control of their costs like the rest of businesses in Michigan, and rates would not be increased as the first course of action. Lower electric rates brought about by competition allow Michigan job providers to become more competitive and able to re-kindle Michigan's economy.

4. Rates should be based on the actual cost of service

Act 286 for the first time put provisions into law saying what economists and most of us in utility ratemaking have known for a long time -- rates need to be based on the cost of serving the customer. Having some customers subsidize the cost of serving other customers is not only unfair, it sends the wrong price signals when trying to encourage efficient use of energy, and is artificially increasing rates for some customers who may, as a result of the unnecessarily high rates, take their business outside of Michigan.

While Act 286's intention of requiring cost based rates within 5 years was good, both the actual language adopted and especially the improper regulatory implementation has not resulted in actual cost of service rates. The language of Act 286 actually tries to mandate the formula so that the MPSC has to move toward cost of service based rates, but in the first Consumers Energy

rate case after Act 286 the MPSC changed a different part of the formula (moving from using 4CP to 12 CP) actually shifting \$20,000,000 of new costs on to primary (large business) customers. In ABATE's view this violated both the letter and the spirit of Act 286's cost of service provisions, but it amply illustrates the problem of trying to legitimately implement cost based rates.

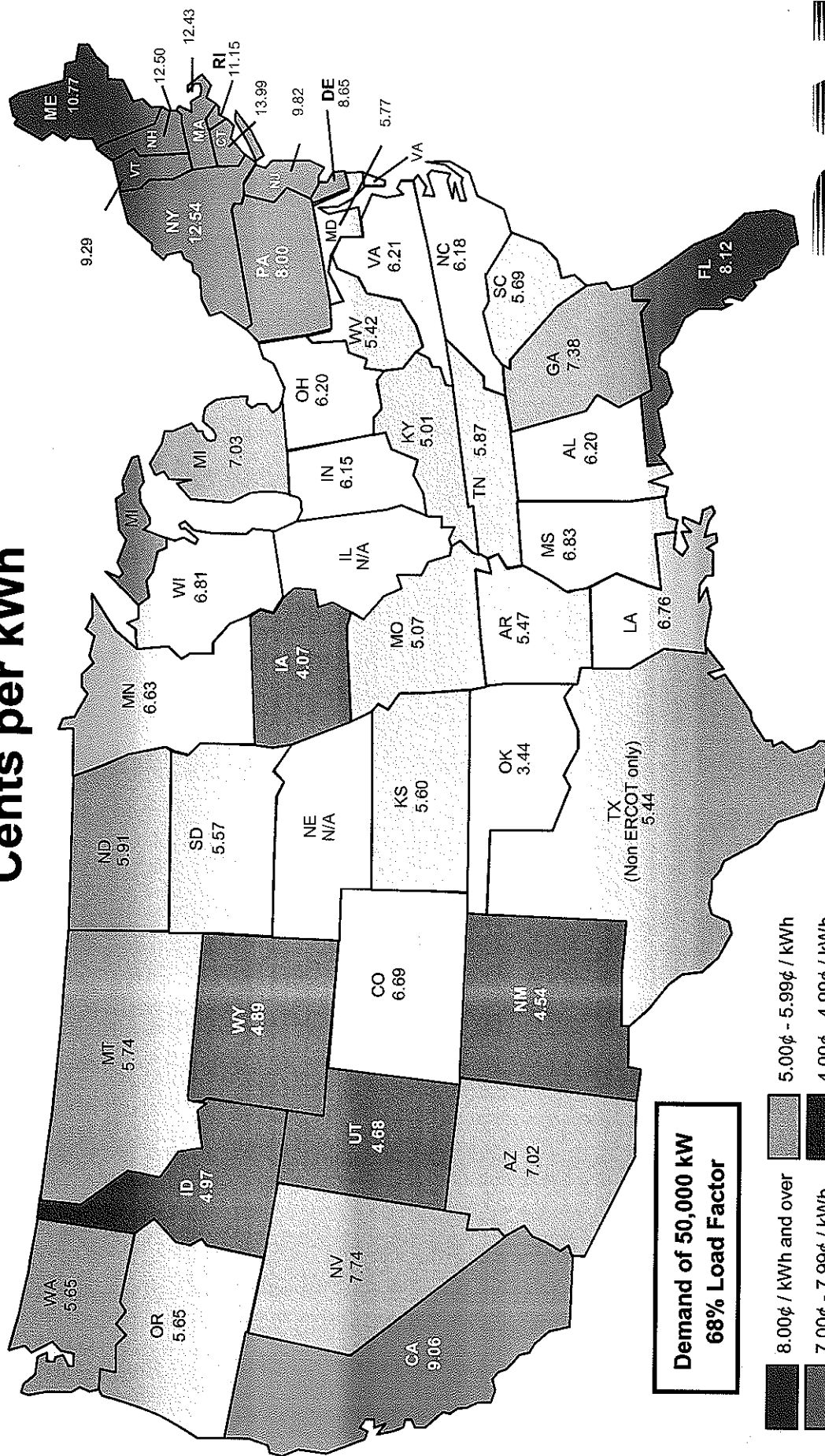
Some mistakenly believe that attempting to require cost based rates within 5 years was a big "win" for business in Act 286. However, it has been a very small token compared to the hundreds of millions of dollars in rate increases that other provisions of Act 286 have cost business. On top of this, rate designs continue to be approved (e.g. allocating costs on kwh basis) which create more and new subsidies all the time, so that even if the 2008 subsidies are eventually phased out within the 5 years required in Act 286, more new subsidies are being created to take their place. For one example, revenue decoupling where costs that should be allocated based on cost of service through a full rate case process are instead allocated entirely on an energy usage (kwh) basis.

In contrast, for educational institutions the legislature mandated that the MPSC establish rates within 90 days "that reflect the actual cost of providing service to those customers." By comparison Business Customers were given ambiguous language, supposedly phasing in cost based rates over 5 years, which the MPSC has not implemented as intended..

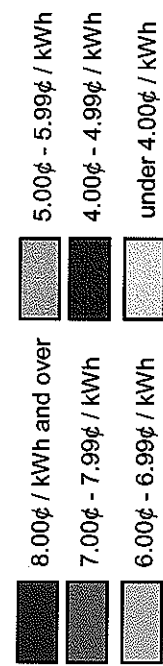
Clear unambiguous language requiring cost based rates should be adopted.

In conclusion, some provisions of Act 286 must be improved if we are to rekindle Michigan's economy, create new jobs, and build the Michigan we all want. We look forward to working with the Committee to accomplish this.

Year 2010 Industrial Firm Power Rates For Investor Owned Utilities Cents per kWh



**Demand of 50,000 kW
68% Load Factor**



Source: Rates: Edison Electric Institute, Winter 2010 & Summer 2010
Weighting: Energy Information Administration/Electric Sales and Revenue

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Detroit Edison & Consumers Power Utility Rate Cases

Since passage of PA 286 in October 2008
Utilities given \$88M in annual increased revenues & self-implemented \$97.5M

